

§ 266.632

remains of record, the HFA must submit to the Commissioner an annual certified statement of the amounts collected by the HFA. The HFA must submit a final certified statement within 30 days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 266.632 Withdrawal of claim.

In case of a default and subsequent filing of claim, the HFA shall determine the form of workout or modification and will inform HUD of the type of mortgage relief determined to be appropriate. If the default is cured after the claim is made but before the initial claim payment is paid by HUD, the HFA may, in writing, withdraw the claim, and insurance will continue as if the default had not occurred.

§ 266.634 Reinstatement of the contract of insurance.

(a) *Conditions for reinstatement.* After the initial claim payment, HUD may reinstate the contract of insurance on the following conditions:

(1) The HFA has not acquired the project;

(2) The mortgagor has cured the default; and

(3) The HFA requests that HUD reinstate the contract of insurance.

(b) *Notification of reinstatement.* If reinstatement is acceptable to HUD, HUD shall notify the HFA of the date the contract of insurance will be reinstated and shall advise the HFA of the payment needed to reinstate the contract of insurance.

(c) *Payment.* Within 30 days of the date of the notice under paragraph (b) of this section, the HFA shall pay HUD an amount equal to the initial claim amount, as determined under § 266.628(a)(1), plus an amount equal to the accrued and unpaid interest on the HFA Debenture through the reinstatement date, plus an amount equal to the mortgage insurance premium for the period from the date of reinstatement of the contract of insurance to the next anniversary date for payment of the mortgage insurance premium.

(d) *Cancellation of debenture.* Upon receipt from the HFA of the amount specified in paragraph (c) of this sec-

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tion, HUD shall return the HFA debenture for cancellation.

(e) *Continuation of contract of insurance.* Upon reinstatement, the contract of insurance shall continue as if the default had not occurred.

§ 266.636 Insuring new loans for defaulted projects.

The HFA may not make another loan that is insured under this part to the same owner in the same project if HUD has paid a claim under this part.

§ 266.638 Issuance of HFA Debenture.

(a) *Condition to initial claim payment.* The HFA must issue an instrument in the form of a debenture to HUD within 30 days of receiving the initial claim payment. The HFA Debenture shall meet the following requirements and shall be in a form that has been approved by HUD as part of the application approval process.

(b) *Term of HFA Debenture.* The HFA Debenture shall be dated the same date that the initial claim payment is issued. The HFA Debenture shall have a term of five years in order to afford the mortgagor ample time to cure the default or the HFA time to foreclose and/or resell the project. HUD may provide a written extension of the five year term if the HFA certifies and provides documentation that the project owner has filed bankruptcy and the HFA is taking action to have the project discharged from the bankruptcy. The HFA Debenture shall, during this extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment. Interest is due on the full face amount of the HFA Debenture through the term of the HFA Debenture or through the date an application for final claim payment is received by the Commissioner.

(c) *HFA Debenture amount.* (1) The HFA Debenture shall be for the full initial claim amount as determined under § 266.628(a)(1) (minus any excess funds returned to HUD under § 266.628(a)(3)).

(2) The full amount of the HFA Debenture shall be payable to HUD upon

maturity, unless the HFA Debenture is canceled because of:

(i) A reinstatement of the contract of insurance under § 266.634; or

(ii) Final claim settlement under § 266.654.

(d) *HFA Debenture interest rate.* The HFA Debenture shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment and on the date of redemption when redeemed or canceled before an anniversary date. Interest shall be computed on the full face amount of the HFA Debenture through the term of the HFA Debenture.

(e) *Form of HFA Debenture.* The HFA Debenture should follow the standard form of a State/Municipal Debenture issued under the Uniform Commercial Code, where applicable, and shall be supported by the full faith and credit of the HFA. For HFAs that operate as departments or divisions of States or units of local government and where such HFAs cannot pledge the full faith and credit of the HFA, such HFAs may collateralize their obligation through a letter of credit, reinsurance, or other forms of credit acceptable to the Commissioner.

(f) *Debenture registration.* Unless otherwise required by law, including State or local laws, or other governing bodies, HUD will not require the HFA Debenture to be "Registered" (with the Securities and Exchange Commission) as it is a direct, or private, placement, and not a public offering, that is supported by the full faith and credit of the HFA.

§ 266.640 Foreclosure and acquisition.

The HFA is not required to foreclose the insured mortgage. It may accept a deed-in-lieu of foreclosure.

§ 266.642 Appraisals.

Where actions taken or caused to be taken by the HFA have the effect of the recovery of less than the face amount of the HFA Debenture held by HUD, an appraisal should be made to determine the value of the project. The appraisal should assume a willing buyer and a willing seller. The ap-

praisal must be done within the 45-day period immediately preceding the date when the HFA files an application for final claim settlement. If at the time of final claim settlement the HFA has not sold the project, an appraisal should be made to determine the value of the project at its highest and best use.

§ 266.644 Application for final claim settlement.

The HFA shall file an application for final settlement in accordance with the Commissioner's administrative procedures not later than 30 days after any of the following:

(a) Sale of the property after foreclosure or after acquisition by deed-in-lieu of foreclosure; or

(b) Expiration of the term of the HFA debenture.

§ 266.646 Determining the amount of loss.

The amount of the total loss to be shared by HUD and the HFA is equal to:

(a) The amount of the initial claim payment;

(b) Plus all items set forth in § 266.648; and

(c) Less all items set forth in § 266.650.

§ 266.648 Items included in total loss.

In computing the total loss, the following items are added to the amount described in § 266.646(a):

(a) The amount of all payments that the HFA made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage; and

(2) Fire and hazard insurance on the property.

(b) A reasonable amount of acquisition costs actually paid by the HFA. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(c) Reasonable payments that the HFA made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property;